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BETWEEN LEGAL REFORM AND JUDICIAL PRACTICE: THE PARADOX OF MARRIAGE DISPENSATION AND CHILD RIGHTS PROTECTION IN INDONESIAN RELIGIOUS COURTS

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ABSTRACT

Indonesia's amendment of Law No. 16 of 2019, which raised the minimum marriage age for women from 16 to 19 years, represents a landmark legal reform aimed at eradicating child marriage and upholding the best interests of the child. However, the persistence of marriage dispensation petitions (dispensasi kawin) filed before Indonesian Religious Courts (Pengadilan Agama) reveals a profound paradox: legislative reform has not translated into proportional judicial protection of child rights. This article critically examines the tension between the spirit of legal reform and entrenched judicial practice in marriage dispensation proceedings. Drawing on a normative-empirical legal research approach, this study analyzes judicial decisions, court statistics, and doctrinal frameworks through the lens of child rights theory and progressive law theory. Findings reveal that despite reformative legislative intent, Religious Courts continue to grant the overwhelming majority of dispensation petitions, frequently citing pregnancy, social pressure, and economic hardship as justifying grounds without adequately weighing the long-term developmental rights of the child. The article argues that this paradox is produced by a confluence of factors including interpretive conservatism among judges, structural gaps in procedural law, insufficient multi-sectoral child protection infrastructure, and the unresolved tension between Islamic family law norms and international child rights standards. The study concludes by proposing a rights-based judicial methodology, enhanced judicial training, and interdisciplinary court-annexed support mechanisms as pathways toward substantive convergence between legal reform and judicial practice.

Keywords : *child marriage; marriage dispensation; Religious Courts; child rights; Indonesian family law; legal reform*

ABSTRAK

Amandemen Undang-Undang No. 16 Tahun 2019 di Indonesia, yang menaikkan usia minimum pernikahan bagi perempuan dari 16 menjadi 19 tahun, merupakan reformasi hukum penting yang bertujuan untuk memberantas pernikahan anak dan menjunjung tinggi kepentingan terbaik anak. Namun, berlanjutnya permohonan dispensasi kawin yang diajukan di Pengadilan Agama Indonesia mengungkapkan paradoks yang mendalam: reformasi legislatif belum diterjemahkan menjadi perlindungan yudisial yang proporsional terhadap hak-hak anak. Artikel ini secara kritis mengkaji ketegangan antara semangat reformasi hukum dan praktik peradilan yang mengakar dalam proses dispensasi kawin. Dengan menggunakan pendekatan penelitian hukum normatif-empiris, studi ini menganalisis keputusan pengadilan, statistik pengadilan, dan kerangka doktrinal melalui lensa teori hak anak dan teori hukum progresif. Temuan menunjukkan bahwa meskipun ada niat legislatif yang reformatif, Pengadilan Agama terus mengabulkan sebagian besar permohonan dispensasi, seringkali mengutip kehamilan, tekanan sosial, dan kesulitan ekonomi sebagai alasan pembenaran tanpa mempertimbangkan secara memadai hak-hak perkembangan jangka panjang anak. Artikel ini berpendapat bahwa paradoks ini dihasilkan oleh gabungan beberapa faktor, termasuk konservatisme interpretatif di kalangan hakim, kesenjangan struktural dalam hukum acara, infrastruktur perlindungan anak multi-sektoral yang tidak memadai, dan ketegangan yang belum terselesaikan antara norma hukum keluarga Islam dan standar hak anak internasional. Studi ini menyimpulkan dengan mengusulkan metodologi peradilan berbasis hak, peningkatan pelatihan hakim, dan mekanisme dukungan interdisipliner yang terintegrasi dengan pengadilan sebagai jalan menuju konvergensi substantif antara reformasi hukum dan praktik peradilan.

Kata Kunci: *perkawinan anak; dispensasi perkawinan; Pengadilan Agama; hak anak; hukum keluarga Indonesia; reformasi hukum*

INTRODUCTION

Child marriage remains one of the most pervasive and structurally entrenched violations of children's rights globally. In Indonesia, which holds the distinction of being the world's largest Muslim-majority democracy, this phenomenon intersects with Islamic family law traditions, customary practices (adat), poverty, and evolving state legal frameworks in ways that produce ongoing tensions between normative aspirations and lived realities (UNICEF, 2021). Despite Indonesia's ratification of the Convention on the Rights of the Child (CRC) in 1990 and the enactment of Law No. 23 of 2002 on Child Protection, subsequently amended by Law No. 35 of 2014 and Law No. 17 of 2016, child marriage has continued at significant rates, facilitated in large part by the legal mechanism of marriage dispensation (dispensasi kawin).

The enactment of Law No. 16 of 2019 amending Law No. 1 of 1974 on Marriage represented the most consequential legislative reform in Indonesian family law in nearly half a century. By equalizing the minimum marriage age at 19 years for both sexes, the legislature sought to eliminate the prior gender-discriminatory threshold that had allowed girls to marry at 16 — a provision the Constitutional Court had earlier flagged as constitutionally problematic (Mudzakkir, 2020). Yet the reform simultaneously preserved the institution of marriage dispensation, allowing courts to authorize marriages below the minimum age upon petition. This preservation, critics argue, has transformed what was intended as a narrow exception into a routinized pathway for child marriage, effectively undermining the reformative intent of the legislation (Wahyuni, 2021).

Statistical evidence makes this paradox vivid. The Supreme Court of Indonesia (Mahkamah Agung) reported a dramatic surge in marriage dispensation petitions following the 2019 reform: from approximately 23,000 petitions in 2018 to over 64,000 in 2020, with approval rates consistently exceeding 95% (Mahkamah Agung Republik Indonesia, 2021). This statistical trajectory raises fundamental questions about the relationship between legislative intent, judicial methodology, and the operational infrastructure of child rights protection in Indonesia. If the law's purpose was to restrict child marriage, why has the dispensation mechanism expanded rather than contracted in its scope and frequency? And what does this tell us about the nature of legal reform when judicial practice remains anchored in pre-reform interpretive frameworks?

The theoretical foundation of this study is principally rooted in child rights theory as articulated in the United Nations Convention on the Rights of the Child (1989) and elaborated by subsequent scholarship. The CRC establishes four cardinal principles: the best interests of the child (Article 3), non-discrimination (Article 2), the right to life, survival and development (Article 6), and the right to be heard (Article 12). Among these, the best interests principle has generated the most extensive jurisprudential and scholarly discussion, serving as the paramount criterion against which state actions affecting children must be assessed (Tobin, 2019).

Freeman argues that child rights theory must move beyond formal recognition of rights toward substantive protection, recognizing children as autonomous rights-holders whose agency and developmental trajectory must be centered in legal decision-making. This perspective challenges paternalistic approaches that reduce child protection to parental or judicial discretion without meaningful engagement with the child's own perspective and interests. In the context of marriage dispensation, it demands that courts engage seriously with evidence about the developmental consequences of early marriage — including its documented effects on educational attainment, physical health, reproductive health, economic autonomy, and psychological well-being (Freeman, 2007; Parsitau, 2018; Raj et al., 2018).

Feminist legal scholars have further enriched this framework by illuminating how gender intersects with childhood vulnerability in the context of early marriage. MacKinnon and others have argued that child marriage is fundamentally a gendered institution, disproportionately imposing its burdens on girls and perpetuating patriarchal structures that subordinate female autonomy and agency (MacKinnon, 2005). In the Indonesian context, this feminist lens is essential for understanding why girls constitute the overwhelming majority of dispensation petitioners despite the formal gender equality introduced by the 2019 reform (Hasyim, 2021).

Progressive law theory, developed in the Indonesian legal scholarly tradition principally by Satjipto Rahardjo provides a second theoretical pillar (Rahardjo, 2009). Progressive law posits that law must be understood not as a static set of rules but as a dynamic instrument for social transformation and human liberation. A progressive jurisprudence does not merely apply rules mechanically but engages critically with their social consequences, asking whether their application advances or retards human flourishing. For marriage dispensation proceedings, progressive law theory demands that judges move beyond

formalistic assessment of whether statutory conditions are met toward a substantive inquiry into what decision genuinely serves the long-term interests of the child.

This theoretical orientation connects to broader debates in comparative constitutional law about the transformative function of courts in societies undergoing social and legal reform. Gloppen argues that courts in developing democracies face a recurring dilemma between institutional conservatism — deference to established practices and elite interests — and transformative engagement with reformative legislative mandates (Gloppen, 2008). The Indonesian Religious Courts' response to the 2019 reform exemplifies this dilemma: caught between the pull of longstanding social and religious norms favoring early marriage and the push of a reform-oriented legislature, these courts have largely defaulted to institutional conservatism.

A third theoretical strand concerns the relationship between Islamic family law (fiqh) and international human rights norms, particularly regarding the age of marriage. Classical fiqh, across its major schools, did not establish a fixed minimum age for marriage, conditioning it instead on puberty (bulugh) and, in the Maliki and Hanbali schools, physical maturity (Welchman, 2007). This has historically created tension with international human rights standards that ground minimum age requirements in the developmental science of childhood and adolescence.

Contemporary Islamic legal scholars have increasingly engaged with this tension, arguing that maqasid al-shariah — the objectives of Islamic law, which include protection of life, intellect, progeny, and property — provides internal Islamic legal resources for supporting child protection standards (Auda, 2008; Kamali, 2008a). This argument holds that a minimum age of marriage, grounded in developmental science and protective of the child's wellbeing, is consistent with — indeed required by — the higher objectives of Islamic law. However, this progressive fiqh scholarship has penetrated Indonesian judicial practice unevenly (Nursyamsu, 2020).

A growing body of empirical scholarship has examined marriage dispensation in Indonesia. Mudzakkir documented the dramatic post-2019 surge in petitions and analyzed the inadequacy of the regulatory framework (Mudzakkir, 2020). Wahyuni conducted a qualitative study of judicial reasoning in dispensation cases, identifying dominant patterns of formalistic reasoning that prioritize social harm avoidance (preventing out-of-wedlock births, protecting family honor) over developmental child rights considerations (Wahyuni, 2021). Nurhayati and Mulia examined the gendered dimensions of dispensation practice, finding

that girls' voices are systematically marginalized in proceedings ostensibly designed to protect their interests (Nurhayati & Mulia, 2020).

Mardiyah analyzed court decisions from five provinces and found significant regional variation in granting rates and reasoning quality, suggesting that local social-cultural factors and judicial human resource differences substantially influence outcomes (Mardiyah et al., 2022). Susanto examined the role of Religious Court administrative systems in processing dispensation cases, identifying procedural gaps that facilitate rapid granting without adequate fact-finding. Collectively, this literature establishes that the paradox this article examines is real and consequential, while leaving room for a more integrated normative-empirical theoretical analysis — which this article supplies (Susanto, 2021).

Despite the growing body of scholarship on marriage dispensation in Indonesia, significant gaps remain in the existing literature. Prior studies have predominantly focused either on doctrinal legal analysis or on fragmented empirical observations of judicial practice, often treating these dimensions in isolation. While empirical works have documented high approval rates and identified patterns of judicial reasoning, they have not sufficiently integrated these findings within a robust theoretical framework that connects child rights theory, progressive law, and Islamic legal thought. Conversely, normative studies have advanced important conceptual arguments but frequently lack empirical grounding in actual court practices. As a result, there remains a lack of comprehensive analysis that systematically explains the persistence of the dispensation paradox as a product of intertwined structural, interpretive, and normative factors within Indonesia's plural legal system.

Against this background, this study is guided by the following research questions: (1) How does the legal framework governing marriage dispensation in Indonesia reflect the objectives of child rights protection following the 2019 legal reform? (2) To what extent do judicial practices in Religious Courts align with or diverge from these normative objectives? and (3) What structural, interpretive, and normative factors explain the persistence of the paradox between legal reform and judicial outcomes in marriage dispensation cases?

Accordingly, the objectives of this study are threefold. First, to critically examine the normative architecture of marriage dispensation within Indonesia's post-reform legal framework. Second, to analyse judicial practices and reasoning patterns in Religious Courts through a normative-empirical approach. Third, to develop a theoretically grounded explanation of the dispensation paradox and to propose a rights-based judicial methodology

that can better align judicial practice with the principles of child rights protection and progressive Islamic legal thought.

RESEARCH METHOD

This study employs a normative-empirical legal research design (Marzuki, 2017), integrating doctrinal legal analysis with empirical examination of judicial practice. The normative dimension involves systematic analysis of the legislative history, statutory text, regulatory framework, and judicial interpretive principles governing marriage dispensation. The empirical dimension involves analysis of judicial decisions, court statistics, and existing empirical scholarship on dispensation practice. This integrated approach reflects the recognition that understanding the paradox of marriage dispensation requires both a rigorous account of what the law says and a critical examination of what courts actually do.

Primary legal sources examined include: Law No. 1 of 1974 on Marriage; Law No. 16 of 2019 amending the Marriage Law; Law No. 23 of 2002 on Child Protection and its amendments; Government Regulation No. 9 of 1975; the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI); Supreme Court Regulation No. 5 of 2019 on Guidelines for Adjudicating Marriage Dispensation Applications; and selected judicial decisions from Religious Courts at first instance and the Supreme Court published on the Mahkamah Agung's SIPP (Case Information System) database. Secondary sources include annual judicial statistics from the Supreme Court, reports from UNICEF Indonesia, Badan Pusat Statistik (BPS), Plan International, and the National Commission on Child Protection (Komnas Anak).

The normative dimension is analyzed through statutory interpretation (textual, historical, systematic, and teleological interpretation methods) and doctrinal mapping of the child rights and Islamic family law frameworks applicable to dispensation proceedings. The empirical dimension is analyzed through descriptive statistical analysis of court data and thematic analysis of judicial reasoning patterns identified in prior empirical studies and in selected published decisions. The integration of these dimensions follows the analytical framework proposed by Tamanaha (2001) for socio-legal analysis, which treats law as simultaneously a normative system and a social practice, requiring analysis at both levels.

FINDINGS AND DISCUSSION

The Legal Architecture of Marriage Dispensation in Indonesia

The institution of marriage dispensation in Indonesia has a complex genealogy that reflects the layered and sometimes contradictory legal pluralism characteristic of Indonesian family law (Nurlaelawati, 2010). The original Marriage Law of 1974 established minimum marriage ages of 16 for women and 19 for men, while simultaneously authorizing courts to grant dispensation for marriages below these thresholds 'for important reasons and sufficient evidence' (Article 7(2)). The Compilation of Islamic Law (1991) incorporated these provisions within an explicitly Islamic family law framework, creating a normative synthesis that has governed Muslim Indonesians' family law matters for three decades.

The 2019 amendment elevated the minimum age for women to 19 years — equalizing it with the minimum for men — in response to the Constitutional Court's 2017 ruling that the prior 16-year threshold for women was discriminatory and incompatible with the Child Protection Law's definition of a child as anyone under 18 (Constitutional Court Decision No. 22/PUU-XV/2017). Crucially, however, Article 7(2) was retained in amended form, still allowing courts to grant dispensation 'where there are very urgent reasons and accompanied by sufficient supporting evidence.' The legislature added the qualifier 'very urgent' (sangat mendesak) to narrow the exception, but did not define the term or enumerate qualifying circumstances.

To operationalize the new dispensation regime, the Supreme Court issued Regulation No. 5 of 2019, which represents the most significant procedural development in this area. The Regulation requires: (1) that dispensation petitions be examined by judges with child-specific competence; (2) that the child applicant be heard directly; (3) that the court consider reports from relevant social institutions; (4) that decisions address child rights and development considerations; and (5) that approvals be granted only where conditions cannot be addressed through non-marriage means. This regulatory framework reflects a deliberate attempt to operationalize rights-based adjudication within the dispensation mechanism (Mudzakkir, 2020).

The Statistical Paradox: Reform and the Surge in Dispensation

The quantitative evidence reveals a pattern deeply at odds with the reformative intent of the 2019 legislation. Rather than declining as one would expect if the tightened minimum age and stricter dispensation criteria were effective, marriage dispensation petitions increased

dramatically. Supreme Court statistics indicate that petitions filed at Religious Courts nationwide rose from approximately 23,376 in 2018 to 34,957 in 2019, and then to 64,211 in 2020 — an increase of approximately 275% over two years (Mahkamah Agung Republik Indonesia, 2021). While the COVID-19 pandemic context of 2020 contributed to this surge, the trajectory was already sharply upward before pandemic conditions took hold.

More striking than the volume is the approval rate. Across the period 2018 to 2022, Religious Courts granted approximately 95 to 97% of all dispensation petitions filed (Mahkamah Agung Republik Indonesia, 2022). This near-universal approval rate suggests that the 'very urgent reason' standard introduced by the 2019 amendment has not functioned as a meaningful threshold. Rather than filtering out insufficiently justified petitions, the standard appears to be satisfied by the mere filing of a petition in the vast majority of cases. This pattern is consistent with Wahyuni's qualitative findings that judges frequently accept petitioners' stated grounds — pregnancy, social pressure, parental agreement — at face value without independent evaluation of the child's developmental interests (Wahyuni, 2021).

Regional variation in approval rates adds a further dimension of complexity. Mardiyah found that courts in East Java, West Java, and West Nusa Tenggara — regions with high rates of customary early marriage — have consistently higher approval rates than courts in urban areas such as Jakarta and Surabaya. This variation suggests that local social-cultural norms condition judicial behavior even within a formally uniform national legal framework, raising questions about the extent to which national legislative reform can achieve uniform implementation without local institutional capacity development (Mardiyah et al., 2022).

Judicial Reasoning Patterns and Their Deficiencies

Analysis of published dispensation decisions and the empirical scholarship on judicial reasoning reveals several recurrent patterns that illuminate the gap between the legislative framework and judicial practice. *First*, pregnancy is by far the most frequently cited justification for granting dispensation, appearing in studies as the stated ground in 60 to 80% of approved petitions (Mardiyah et al., 2022; Nurhayati & Mulia, 2020). While pregnancy may in some cases constitute a genuinely urgent circumstance, its near-automatic acceptance as sufficient justification effectively transforms the 'very urgent reason' standard into a pregnancy exception of potentially broad scope — not unlike the pre-reform framework it was intended to restrict.

Second, judicial decisions frequently invoke harm prevention rationales centered on the social and religious consequences of out-of-wedlock birth — stigma, family honor, religious impermissibility of sexual relations outside marriage — without engaging with the countervailing developmental harms of early marriage for the child. This reasoning reflects a consequentialist framework that prioritizes immediate social harm over the child's long-term developmental rights, inverting the hierarchy that the CRC's best interests principle demands (Tobin, 2019). It also reflects a failure to engage with evidence about the concrete consequences of child marriage: elevated maternal mortality, educational discontinuation, increased domestic violence risk, and perpetuation of intergenerational poverty (Parsitau, 2018).

Third, compliance with the child-hearing requirement of Supreme Court Regulation No. 5 of 2019 has been highly uneven. Susanto found that while most courts formally record that the child applicant was present and heard, the substantive quality of this hearing — whether the child's stated views were genuinely considered, whether the child received independent information about alternatives, whether the child's consent was freely given rather than socially coerced — is difficult to verify from decision texts and is frequently absent from the reasoning. This gap between procedural compliance and substantive engagement reflects a broader problem of formalism in Indonesian judicial practice (Susanto, 2021).

Fourth, multidisciplinary evidence — psychological assessments, social worker reports, child development expertise — is rarely integrated into dispensation proceedings despite the Regulation's encouragement. Most courts rely exclusively on testimony from the petitioners and the child applicant, without independent expert assessment of the child's developmental readiness, the availability of alternatives, or the family's capacity to support the child's continued development. This evidential minimalism substantially constrains the court's ability to make genuinely informed best-interests determinations (Nursyamsu, 2020).

Structural and Institutional Factors

Beyond individual judicial reasoning, the persistence of the dispensation paradox reflects structural and institutional factors that operate at the level of the court system and its broader socio-legal environment. Religious Courts face severe resource constraints: high caseloads, limited judicial training in child rights, and minimal infrastructure for child-sensitive proceedings (Rofiq, 2013). The surge in petitions following the 2019 reform has

further strained these institutions, creating pressures toward rapid case processing that are fundamentally at odds with the careful, rights-based adjudication the regulatory framework demands.

The absence of effective multi-sectoral child protection infrastructure surrounding the courts exacerbates this problem. In many areas, the social institutions whose reports are required by the Supreme Court Regulation — child protection agencies, social workers, psychological services — either do not exist or lack the capacity to provide timely, high-quality assessments. Courts thus find themselves expected to conduct child rights-sensitive adjudication without the institutional support that such adjudication requires (Mudzakkir, 2020).

Furthermore, the legal aid (bantuan hukum) framework does not adequately extend to child applicants in dispensation proceedings. Petitions are typically filed by parents or guardians and supported by family counsel, while the child applicant — whose interests are nominally the paramount concern — frequently has no independent legal representation or access to information about their legal position and alternatives. This structural asymmetry systematically disadvantages the very subject whose interests the proceedings are designed to protect (Hasyim, 2021).

DISCUSSION

The Paradox Explained: Structural, Interpretive, and Normative Dimensions

The evidence reviewed in the preceding section establishes the reality and magnitude of the paradox: a legislative reform designed to restrict child marriage has been followed by a dramatic increase in judicially authorized child marriages. This paradox requires explanation at three levels: structural, interpretive, and normative.

At the structural level, the paradox reflects the unintended consequences of raising the minimum marriage age without simultaneously strengthening child protection infrastructure and access to alternatives. By making formal child marriage without dispensation clearly illegal, the 2019 reform may have redirected families who would previously have married children without formal authorization toward the dispensation mechanism — thereby legalizing and counting practices that previously occurred informally (Wahyuni, 2021). This displacement effect, combined with the near-universal granting pattern, means the reform may have actually increased the formal authorization of child

marriage, even if it reduced informal, undocumented child marriage. The net impact on children's lived experiences remains deeply uncertain.

At the interpretive level, the paradox reflects the interpretive conservatism of Indonesian Religious Court judges, who have generally applied the new 'very urgent reason' standard through pre-existing conceptual frameworks rather than developing a new, rights-based interpretive methodology. Satjipto Rahardjo's progressive law theory predicts this pattern: legal reform produces real change in judicial practice only when accompanied by the development of new interpretive frameworks and the formation of a judicial culture committed to the transformative purposes of the reform. Without such frameworks and culture, new legislative text tends to be assimilated into existing interpretive schemas, blunting its reformative impact (Rahardjo, 2009).

At the normative level, the paradox reflects the unresolved tension between competing normative frameworks — Islamic family law as traditionally understood, international child rights standards, and progressive Indonesian constitutional values — that judges must navigate in dispensation proceedings without clear authoritative guidance. Where multiple normative frameworks are in tension and no authoritative synthesis has been established, judicial practice tends toward path dependence: replication of familiar reasoning patterns rather than creative engagement with the normative tension (Tamanaha, 2001).

Toward a Rights-Based Judicial Methodology for Marriage Dispensation

Moving beyond diagnosis toward prescription, this article proposes a rights-based judicial methodology for dispensation proceedings, grounded in the theoretical framework articulated in Section 2 and responsive to the structural and interpretive deficiencies identified in Section 4.

The core of this methodology is a substantive best-interests assessment that moves beyond formal compliance with procedural requirements toward genuine engagement with the child's developmental situation. Drawing on the CRC Committee's General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, this assessment should encompass: the child's own views, expressed freely and competently; the child's physical and emotional needs and developmental stage; the immediate and long-term consequences of granting or refusing dispensation; the availability of alternatives to marriage that could address the petitioners' stated urgent needs; and the

systemic consequences of the decision for child rights protection in the community (Tobin, 2019).

This methodology requires courts to engage with social-scientific evidence about the consequences of child marriage — evidence that is now substantial and methodologically sophisticated (Parsitau, 2018; Raj et al., 2018). It also requires courts to develop competency in child-appropriate hearing procedures that can distinguish freely given consent from socially coerced acquiescence — a distinction that current practice systematically fails to make. In this regard, the child psychology and child development expertise available in Indonesian universities and social institutions could play a far more substantial role in dispensation proceedings than current practice permits.

This rights-based methodology is consistent with — and, this article argues, required by — the Islamic legal principle of maqasid al-shariah. Protection of progeny (hifzh al-nasl) and protection of the child's intellect and developmental capacity (hifzh al-'aql) are core maqasid objectives that provide robust Islamic legal grounding for child protection standards in dispensation proceedings (Auda, 2008; Kamali, 2008b). Courts that invoke Islamic law in dispensation proceedings should be encouraged to engage with this progressive fiqh scholarship rather than defaulting to classical positions that lack contemporary developmental scientific grounding.

Systemic Reform Pathways

Beyond judicial methodology, the paradox of marriage dispensation requires systemic reform across several dimensions. *First*, judicial capacity development must be substantially enhanced. The Supreme Court's judicial training institutions should develop and deliver sustained, substantive training in child rights, child development science, and rights-based adjudication for Religious Court judges and staff — moving beyond one-time seminars toward an ongoing professional development curriculum embedded in judicial career progression (Mudzakkir, 2020).

Second, multi-sectoral child protection infrastructure must be developed in geographic areas with high rates of dispensation petitions. This requires not just court-side reforms but inter-ministerial coordination involving the Ministries of Social Affairs, Education, Health, and Religious Affairs, as well as local government child protection agencies. The goal should be the creation of court-annexed child protection services that can provide timely, high-quality psychological, social work, and child development assessments in dispensation

proceedings — addressing the evidential minimalism that currently undermines rights-based adjudication.

Third, legal aid for child applicants must be established as a systematic feature of dispensation proceedings rather than an occasional exception. This requires both regulatory action — amending Supreme Court Regulation No. 5 of 2019 to require appointment of a child guardian ad litem in all dispensation proceedings — and resourcing, through the legal aid fund administered by the Ministry of Law and Human Rights and through partnerships with law faculty clinical programs (Hasyim, 2021; Susanto, 2021).

Fourth, data collection and monitoring systems must be strengthened to enable evidence-based policy development. Currently, the Supreme Court's case statistics provide aggregate petition and decision counts but do not capture data on judicial reasoning patterns, the child's age and gender, stated grounds for dispensation, or outcomes for the child and family in subsequent years. A longitudinal case tracking system, integrated with civil registration data, would enable systematic monitoring of the effectiveness of judicial and systemic reforms and provide the empirical foundation for ongoing policy development (Mardiyah et al., 2022).

Fifth and finally, the legislative framework itself requires revisiting. The preservation of the dispensation mechanism in the 2019 reform reflected political compromise rather than principled child rights analysis. A more robust legislative approach would define 'very urgent reasons' with greater specificity, enumerate permissible and impermissible grounds, establish mandatory minimum procedural requirements with content standards (not merely formal compliance thresholds), and create clear grounds for appellate review of dispensation decisions. These legislative changes would provide judges with clearer normative guidance while creating accountability mechanisms that currently do not exist (Nursyamsu, 2020; Wahyuni, 2021).

CONCLUSION

This article has examined the paradox at the heart of Indonesia's approach to marriage dispensation: a legislative reform designed to protect children from early marriage has been accompanied by a dramatic expansion in judicially authorized child marriages, with approval rates that suggest the reform's substantive protective intent has not been realized in judicial practice. This paradox is not a simple implementation failure but a complex

product of structural, interpretive, and normative tensions embedded in Indonesia's pluralistic legal landscape.

The analysis reveals that Indonesian Religious Courts, despite operating under an amended legislative framework and enhanced procedural regulation, continue to adjudicate dispensation petitions through interpretive frameworks and reasoning patterns that were formed in the pre-reform era. The result is near-universal approval of petitions, inadequate engagement with the child applicant's developmental interests, evidential minimalism that forecloses substantive best-interests assessment, and systematic marginalization of children's voices in proceedings ostensibly designed to protect them.

Resolving this paradox requires action at multiple levels simultaneously: a rights-based judicial methodology that operationalizes the best interests principle in dispensation adjudication; sustained judicial capacity development in child rights and child development; multi-sectoral child protection infrastructure to support evidence-based adjudication; systematic legal aid for child applicants; enhanced data systems for monitoring and accountability; and legislative reform that provides clearer normative guidance and accountability mechanisms. Crucially, these reforms must be grounded not only in international human rights law but also in the progressive fiqh scholarship that demonstrates the consistency of child protection standards with the higher objectives of Islamic law — thereby bridging the normative gap that has enabled judicial conservatism to resist the CRC's demands.

The deeper lesson of the marriage dispensation paradox extends beyond Indonesia. It illustrates a recurrent dynamic in legal reform: formal legislative change, however well designed, does not automatically produce corresponding change in judicial practice when it is not accompanied by investment in judicial capacity, interpretive framework development, and the institutional infrastructure that substantive rights protection requires. Legal reform produces real transformation only when the entire ecosystem of legal practice — from legislative text to judicial culture to court infrastructure to legal aid — is aligned behind the reform's purposes. In the case of child marriage in Indonesia, that alignment remains urgently needed.

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